

IN THE UNITED STATES DISTRICT COURT
STATE OF SOUTH CAROLINA
GREENWOOD DIVISION
CIVIL ACTION NO. 8:09-CV-3029-RBH

ALISON JAY,)	
PERSONAL REPRESENTATIVE OF THE)	
ESTATE OF JEREMY WESLEY)	
JAY, DECEASED)	
)	
PLAINTIFF,)	
)	
v.)	AMENDED COMPLAINT
)	(JURY TRIAL)
GREENTREE TRANSPORTATION)	
COMPANY; TRANSPORT)	
INVESTMENTS, Inc.;)	
SAUL A. CARBALLO, an individual; and)	
MAMMOET USA SOUTH, INC.)	
)	
DEFENDANTS.)	
)	

Comes now, Plaintiff and amends the initial Complaint in this cause by joining as an additional Defendant Mammoet USA South, Inc. as follows:

13. Plaintiff adopts and incorporates the allegations of the original Complaint attached hereto as Exhibit A.

14. Defendant Mammoet USA South, Inc. (herein after referred to as Mammoet) is a corporation organized and existing under the laws of the State of Delaware with its principle place of business located in Rosharon, Texas. Mammoet is engaged in the business of shipping cargo in the stream of interstate commerce and is subject to the rules of the Interstate Commerce Commission, does business throughout the continental United States, including the State of South Carolina, and at the time of the collision hereinafter referred to

was using the highways of the State of South Carolina, was doing business in the State of South Carolina, and is therefore subject to the jurisdiction of this Court. At all times pertinent to this cause, Mammoet, operating as a “shipper,” loaded or caused to be loaded the subject cargo which ultimately resulted in the death of Plaintiff’s decedent.

15. The matter in controversy exceeds Seventy-five Thousand Dollars (\$75,000) exclusive of interest and costs, and complete diversity of citizenship exists between the parties and there is jurisdiction in this Court pursuant to Section 1332 of Title 28 of the United States Code.

COUNT THREE

16. On or about October 23, 2009, Mammoet contracted with Defendant Greentree Transportation (herein after referred to as Greentree) to transport a container box from Rosharon, Texas to Mammoet’s job site located in Greenwood, South Carolina. Mammoet requested Greentree use a flatbed trailer for the transportation of said cargo. On October 23, 2009, Greentree dispatched a leased driver, Defendant Saul Carballo, (herein after referred to as Carballo) with a flat bed tractor trailer truck which Mammoet loaded with the subject container box. The total height of the subject container and trailer together exceeded the maximum height allowances set by the Departments of Transportation for Louisiana, Mississippi, Alabama, Georgia, and South Carolina. Mammoet did not obtain an over dimensional transportation permit from said States prior to transport. Carballo left Mammoet in Rosharon, Texas on October 23, 2009, drove through Louisiana, Mississippi, Alabama, Texas and Georgia before arriving in Edgefield, South Carolina on October 26, 2009. At said time and place, Plaintiff’s decedent was operating a motor vehicle in the southbound lane of Augusta Road at or near Mimms Street in the City of Edgefield, South Carolina. On said date and occasion, the subject container box struck a railroad trestle, causing the subject

container box to become dislodged from the trailer, fall therefrom and land on the passing motor vehicle driven by Plaintiff's decedent resulting in his immediate death.

17. The direct and proximate cause of the death of Plaintiff's decedent was the separate and several negligent, careless, reckless, willful, wanton, gross negligence and/or intentional acts of all Defendants, including Mammoet in the following particulars:

- a. Choosing an improper trailer to transport the subject cargo;
- b. failing to measure the total height of the subject cargo and trailer;
- c. ignoring height restrictions laws for over dimensional loads as administered by the Department of Transportation for the following States: Louisiana, Mississippi, Alabama, Georgia, and South Carolina.
- d. failing to obtain proper permitting for an over dimensional loads from the Department of Transportation of Louisiana, Mississippi, Alabama, Georgia and South Carolina as required by the law;
- e. failing to properly route and/or allow the South Carolina Department of Transportation to route said delivery as to avoid low lying trestles and overpasses;
- f. otherwise improperly loading and securing the subject cargo at an excessive height;
- J. failing to act as a reasonable and prudent person would under the circumstances then and there existing.

18. Based upon the foregoing, the Plaintiff is informed and believes that she is entitled to compensatory and punitive damages to deter all Defendants, separately and severally, in the future from willfully, wantonly, grossly negligently and intentionally acting in such manner as set out herein above.

WHEREFORE, the Plaintiff demands judgment against the all Defendants for the wrongful death of Plaintiff's decedent in a sum a jury deems just and proper.

PLAINTIFF DEMANDS TRIAL BY JURY

Respectfully submitted,

Aiken, South Carolina
June 21, 2010

s/Charles E. Simons, III
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